IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO.252 OF 1997

Shri Babasaheb Dnyaneshwar Pawar ...Applicant.
V/s.
1.Sau. Savita Babasaheb Pawar
R/at C/o Motilal Chandani Hotel,
in front of Ganesh Gandhi
Karkhana, Pune-38.
2.Kum. Vidya Babasaheb Pawar
3.Kum..Meenakshi Babasaheb Pawar
minors through natural guardian mother
respondent no.1.
4.The State of Maharashtra ..Respondents.

Shri V.G.Peshve, adv. for the Applicant.
Shri Y.S.Shinde, APP for the Respondent No.4/State.

CORAM: J.H.BHATIA, J.
DATE : 13th February, 2007.

ORAL JUDGMENT:

1. The applicant by this revision application seeks to quash the order of maintenance passed by the learned Family Court, Pune in favour of respondent nos.1 to 3.

2. At the outset, it may be stated that this matter was on board for the last about 2 weeks and in spite of repeated calls, none has appeared on 9th February, 12th February and even today none appears for the applicant as well as respondents. Therefore, I have gone through the record and I proceed to dispose off the application.

3. Admittedly, the applicant and respondent no.1 were married on 18-11-1992 and out of wedlock, respondent nos.2 and 3 were born on 2-9-93 and 18-10-95 respectively. The respondents filed an application under Section 125 of the Cr.P.C. before the Family Court alleging that the applicant had neglected to maintain the respondents and had driven out respondent no.1 alongwith her children. The applicant is in service with Pune Municipal Corporation and was drawing a salary of Rs.3,000/- per month at that time. They claimed maintenance for each of them. The applicant contested that application and contended that he was already married to one Kamal on 21-5-1991 and he had taken divorce from Kamal on 3-8-93 in Marriage Petition no.377 of 1992. As such on 18-11-1992 his marriage with Kamal was subsisting and therefore, there could not be valid marriage between applicant and respondent no.1. Hence the respondent no.1 is not entitled to claim maintenance. After hearing the evidence for both the parties, the learned Family Court Judge rejected the contention of the applicant and directed him to pay maintenance of Rs.250/- per month to respondent no.1 and Rs.200/- per month to respondent no.2 and Rs.150/- per month to respondent no.3 from the date of application.

4. From the record, it appears that even though the applicant was married to one Kamal in 1991, they could not pull on well and therefore, Kamal had filed a petition for divorce against the present applicant. It was registered as Petition A-No.377 of 1992. That petition was disposed off by mutual consent on 3-8-1993 and the marriage was dissolved. Technically it will be correct to say that marriage of the applicant and his first wife Kamal was subsisting when the marriage of the applicant and respondent no.1 took place on 18-11-1992. However, according to Savita, she was not aware that the applicant was already married and that his first marriage was subsisting. Therefore, when she was married to the applicant, she was not aware either about his first marriage or about pending divorce petition. Admittedly, the divorce petition was filed by the first wife of the present applicant before the marriage of the present applicant and respondent no.1. From this, it appears that after divorce petition was filed by the first wife, the present applicant was also willing to give divorce and finally it was disposed off under Section 13-B of the Hindu Marriage Act by mutual consent. In such circumstances, the present applicant, without disclosing his first marriage or pending divorce petition, entered into second marriage with respondent no.1 and thus, he misled her and in a way, he cheated

her. In view of this, the applicant could be even liable to be prosecuted for the offence punishable under Section 494 of the I.P.C. In the present matter, the applicant is trying to take benefit of his own wrong, which he committed against respondent no.1. It is material to note that after the divorce petition filed by the first wife was allowed and decree was passed, there was no hurdle in the valid marriage of the applicant and respondent no.1. Therefore, it can be stated that even though initially marriage was not lawful, but as after divorce from the first wife, the applicant continued to keep respondent no.1 as his wife and out of the wedlock, two children were also born, therefore, it can not be said that respondent no.1 is not lawfully wedded wife of the present applicant. The learned Trial Court has dealt with the oral and documentary evidence to point out that respondent no.1 was always treated not only by the present applicant but also by the society as his wife. Her name was recorded as his wife in the ration card, voting list and even name of the present applicant was recorded as father of both the children in the hospital and otherwise.

5. Taking into consideration all the circumstances, I find no substance in the contention of applicant nor I find any fault with the impugned order.

In the result, revision application stands dismissed.

(J.H.Bhatia,J.)